



Paper No. 11

A SIDNEY JOHNSTON
CESARI AND MCKENNA LLP
88 BLACK FALCON AVE
BOSTON MA 02110-2414

COPY MAILED**SEP 4 2001****OFFICE OF PETITIONS**

In re Application of
Edsall, et al. :
Application No. 09/593,566 : DECISION ON PETITION
Filed: August 16, 2000 :
Attorney Docket No. 112025-0195 :

This is a decision on the petitions, filed November 6, 2000 and March 1, 2001, requesting that the Commissioner find that the declaration has been properly filed and that the application be accorded a filing date of June 14, 2000.

Application papers in the above-identified application were filed on June 14, 2000. On July 5, 2000, applicants received a post card filing receipt dated June 14, 2000 indicating that 27 pages of specification and an assignment were not received by the Patent and Trademark Office. In addition, on August 14, 2000, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicants that the application papers had not been accorded a filing date because the specification was missing.

On August 16, 2000, applicants filed a specification, drawings, and assignment, together with a copy of the June 14, 2000 postcard receipt (indicating nonreceipt of the specification and assignment). The Office responded on December 5, 2000 with a Notice to File Missing Parts of Nonprovisional Application because the late filing fee or oath or declaration surcharge was not received. Applicants submitted the surcharge on December 29, 2000. However, a Notice of Incomplete Reply was mailed on January 15, 2001 because the oath or declaration was missing. A copy of the oath or declaration was submitted on March 16, 2001.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. Conversely, when the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was **not** received by the Office, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the Office. See MPEP 503. Because the application papers submitted on June 14, 2000 did not include a specification (as evidenced by the postcard receipt), the above-identified application can not be accorded an application date of June 14, 2000.

In view thereof, the petition to accord a filing date of June 14, 2000 in the above-identified application is **DISMISSED**.

Accordingly, the application filing date of August 16, 2000 is the correct filing date.

The declaration submitted on March 16, 2001 is acknowledged and made of record. In addition, Office records indicate that an assignment has been recorded.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

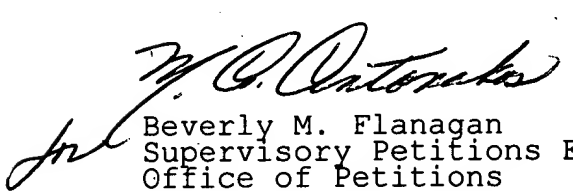
By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

The application file is being forwarded to Technology Center 2600 for examination.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy